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EXAMINER				
WOOD, ELLEN S				
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1794				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/714,197

Applicant(s)

BALAJI ET AL.

Examiner

ELLEN S. WOOD

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1.5-10, 12-18 and 20-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1.5-10, 12-18 and 20-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The applicant claims ***“the claim has a shrinkage of less than about 5%”***. This is indefinite because one does not know if the shrinkage is referring to the machine direction of the label, the transverse direction or a combined value for the label in both directions.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 5-12, 14-15, 18 and 20-25 rejected under 35 U.S.C. 102(e) as being anticipated by Wilhoit et al. (US 5,928,740, hereinafter “Wilhoit”)

In regards to claim 1, Wilhoit discloses a thermoplastic resin blend and flexible films thereof having heat sealing and puncture resistance properties (col. 1 lines 5-10).

The film has a heat sealing layer comprises a second polymer that comprises an ethylene alpha olefin copolymer (col. 7 lines 17-23). The second polymer include copolymers of ethylene with at least one C₃-C₁₀ (col. 7 lines 61-64). The melting point is between 85 to 110⁰C (col. 7 lines 59-60). The second copolymer may be AFFINITYTM PL 1880 and 1840(col. 8 lines 1-2). These copolymers are the same as those used by the applicant in the heat sealable layer (pg. 8 lines 4-6) and are commercially available materials. Thus, it would be inherent that the met characteristics are the same as those claimed by the applicant.

In regards to claim 5, Wilhoit discloses using AFFINITYTM as a copolymer in the heat sealing layer (col. 8 lines 1-2). It is known to one of ordinary skill in that art that these copolymers are produced using a metallocene catalyzed process.

In regards to claim 6, Wilhoit discloses that the M_w/M_n of the copolymer is less than 3.5 (col. 8 line 1).

In regards to claim 7, Wilhoit discloses that the heat seal layer is a blend of the polyolefin and a film-forming polymer (col. 6 lines 9-21).

In regards to claims 8-9, Wilhoit discloses that the heat seal layer is a blend of the polyolefin and ethylene vinyl acetate (col. 9 lines 9-12),

In regards to claims 10 and 12, Wilhoit disclose that the fourth polymer (EVA) is optional (col. 8 lines 62-63). Thus, it is inherent that the film may have an embodiment where the heat seal layer is substantially free of ethylene vinyl acetate. Applicant considers EVA as a carrier resin (pg. 10 lines 12-17). Thus, it would also be inherent

that the film may have an embodiment where the heat seal layer contains less than 0.5% carrier resins.

In regards to claim 14, Wilhoit discloses that the films have a thickness that is preferably 10 mils or less (col. 11 lines 37-38).

In regards to claim 15, Wilhoit disclose a three layered film that comprises a heat sealable layer, a core layer and a third outer layer that comprise a metallocene catalyzed polyolefin (cols. 15-16 example 2). It is inherent that metallocene catalyzed polyolefin have printing characteristics. Thus, the third outer layer is considered the printable skin layer.

In regards to claim 18, Wilhoit disclose a three layered film that comprises a heat sealable layer, a core layer and a third outer layer that comprise a metallocene catalyzed polyolefin (cols. 15-16 example 2). It is inherent that metallocene catalyzed polyolefin have printing characteristics. Thus, the third outer layer is considered the printable skin layer. The film has a heat sealing layer comprises a second polymer that comprises an ethylene alpha olefin copolymer (col. 7 lines 17-23). The second polymer include copolymers of ethylene with at least one C₃-C₁₀ (col. 7 lines 61-64). The melting point is between 85 to 110⁰C (col. 7 lines 59-60). The second copolymer may be AFFINITY™ PL 1880 and 1840(col. 8 lines 1-2). These copolymers are the same as those used by the applicant in the heat sealable layer (pg. 8 lines 4-6) and are commercially available materials. Thus, it would be inherent that the met characteristics are the same as those claimed by the applicant.

In regards to claim 20, Wilhoit discloses that the second copolymer may be AFFINITY™ PL 1880 and 1840(col. 8 lines 1-2), which is a copolymer derived from ethylene and octene.

In regards to claim 21, Wilhoit discloses using AFFINITY™ as a copolymer in the heat sealing layer (col. 8 lines 1-2). It is known to one of ordinary skill in that art that these copolymers are produced using a metallocene catalyzed process.

In regards to claim 22, Wilhoit discloses that the heat seal layer is a blend of the polyolefin and a film-forming polymer (col. 6 lines 9-21).

In regards to claims 23-24, Wilhoit discloses that the heat seal layer is a blend of the polyolefin and ethylene vinyl acetate (col. 9 lines 9-12),

In regards to claim 25, Wilhoit disclose that the fourth polymer (EVA) is optional (col. 8 lines 62-63). Thus, it is inherent that the film may have an embodiment where the heat seal layer is substantially free of ethylene vinyl acetate. Applicant considers EVA as a carrier resin (pg. 10 lines 12-17). Thus, it would also be inherent that the film may have an embodiment where the heat seal layer contains less than 0.5% carrier resins.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 13, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilhoit et al. (US 5,928,740, hereinafter "Wilhoit").

Wilhoit discloses a thermoplastic resin blend and flexible films thereof having heat sealing and puncture resistance properties (col. 1 lines 5-10). The film has a heat sealing layer comprises a second polymer that comprises an ethylene alpha olefin copolymer (col. 7 lines 17-23). The second polymer include copolymers of ethylene with at least one C₃-C₁₀ (col. 7 lines 61-64). The melting point is between 85 to 110°C (col. 7 lines 59-60). The second copolymer may be AFFINITY™ PL 1880 and 1840 (col. 8 lines 1-2). These copolymers are the same as those used by the applicant in the heat sealable layer (pg. 8 lines 4-6) and are commercially available materials. Thus, it would be inherent that the met characteristics are the same as those claimed by the applicant.

Wilhoit is silent with regards to the shrinkage of the film, the film being optically opaque and the film being optically transparent.

When a work is available in one field, design incentives and other market forces can prompt variations of it, either in the same field or in another. *KSR* at 1396. If a person of ordinary skill in the art can implement a predictable variation, and would see the benefit of doing so, § 103 likely bars its patentability. *Id.* Moreover, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond that person's skill. *Id.*

One of ordinary skill in the art at the time the invention was made, when viewing the state of the art and the predictable improvements in structures known in the art,

would be motivated to improve the shrinking ability and the optical appearance of the label, of the prior art.

Response to Arguments

7. Applicant's arguments with respect to claims 1, 5-10, 12-18 and 20-25 have been considered but are moot in view of the new ground(s) of rejection.

A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In the instant case the film of Wilhoit is capable of performing the intended use of an in-mold label, thus it meets the claim limitations.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELLEN S. WOOD whose telephone number is (571)270-3450. The examiner can normally be reached on M-F 730-5 with every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571)272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. Lawrence Tarazano/
Supervisory Patent Examiner, Art Unit 1794